



**KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM**

Complaint No. 84/2023

Present: Smt. Preetha P Menon, Member

Dated 20th January, 2025

Complainant

Aneesh A S,
Represented by the
Power of Attorney holder A Sudhakaran,
Aneesh Bhavan, Madavoor,
Pallickal P.O, Thiruvananthapuram,
Pin - 695602

[By Adv. K Sudheesachandran]

Respondents

- 1 M/s Heera Construction,
Regional Office, Heera Park,
M P Appan Road, Vazhuthacaud,
Thiruvananthapuram - 695014
- 2 Mr Abdul Rasheed alias,
Dr. A R Babu, Regional office,
Heera Park, M P Appan Road,
Vazhuthacaud, Thiruvananthapuram - 695014



Additional Respondents (amended as per order in I A 164/23 dated 27/11/2023)

- 3 M/s Royal Heights Projects Pvt Ltd,
Door No. 63/2982, Manjakkal House,
Surabhi Enclave, S A Road, Ernakulam,
Represented by its Managing Director
Mr. Tiju Varghese Chacko
- 4 Mr. Tiju Varghese Chacko,
Managing Director,
M/s Royal Heights Projects Pvt Ltd,
No. 63/2982, Manjakkal House,
Surabhi Enclave, S A Road, Ernakulam – 682016
[R3&R4 By Adv Sandeep Sreekumar]

The above Complaint came up for virtual hearing on 14/08/2024. The counsel for the Complainant Adv. Sudheesachandran and counsel for the Respondents 3&4 Adv. Sandeep Sreekumar attended the hearing.

ORDER

1. The facts of the case are as follows: - The Complainant is an allottee in the project Heera Dreams. On 13/07/2009, the Complainant and his wife went to the Regional Office of the Respondent and after a detailed discussion, the Complainant decided to book an apartment. The Respondent allotted apartment No. 27 D7 on the 27th floor of the Astra (Tower-1) of the project Heera Dreams. The Complainant and his wife



issued two cheques for Rs. 1 lakh each. On the same day the Complainant and his wife and the Respondent executed two agreements, (1) Agreement for Sale (2) Construction Agreement specifying the terms and conditions of the construction of the apartment. As demanded by the Respondent the Complainant made the payments without fail; Rs. 3 Lakhs on 27/08/2009, Rs. 3 Lakhs on 08/04/2011, Rs. 2 Lakhs on 08/11/2011, Rs. 4 Lakhs on 27/06/2012, Rs. 2,13,627/- on 11/11/2015. The Complainant made a total payment of Rs. 16,13,627 for which the Respondent issued a statement of account acknowledging the said payment. On seeing that the construction is not progressing, the Complainant contacted the Respondent and it was learnt that due to some technical reasons, the height of the tower has to be reduced and hence the Respondent suggested that Complainant has to take an apartment on the 22nd floor instead of the 27th floor. As suggested by the Respondent, the Complainant agreed to accept the allotment of apartment No. 22. D5 on the 22nd Floor and agreed to the revised estimate also. Accordingly, a fresh agreement for sale and a fresh agreement for construction was executed on 01/02/2016. It was agreed thereon that the total estimated value including the value of undivided interest is Rs. 38,70,250/-. As per the terms of agreement, in case of default in payment of instalment the Complainant is bound to pay interest at the rate of 18% per annum. Hence the Complainant is entitled to get interest at the same rate. On seeing that there is no progress to the construction and thereby

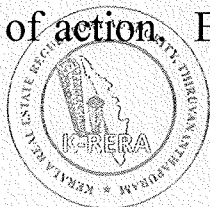


the Complainant is incurring huge loss towards interest, the Complainant gave a letter dated 24/12/2018 requesting to refund the amount paid with interest, for which the respondent turned a deaf ear. Repeated requests did not become fruitful. At present, the project is dropped and the only remedy is to get back the amount paid with interest amounting to Rs. 49,42,669/-. Even though the apartment is booked in the name of the Complainant and his wife, agreements are executed by the Complainant. Hence the Complainant has executed a Power of Attorney before the High Commission of India, Singapore authorizing his father Sudhakaran to file and prosecute this claim. The relief sought by the Complainant (1) to pass an order directing the Respondent to pay an amount of Rs. 49,42,669/- which includes the interest for the instalments from the respective date at the rate of 18% per annum till the date of this Complaint and future interest @ 18% to the Complainant and allow to recover from the Respondent and his assets. (2) to pass an order directing the Respondent to pay Rs. 5,00,000/- towards compensation for the mental agony and undue hardships caused to the applicant. (3) to allow the costs of the petition to be recovered from the Respondent. The Complainants have produced the copies of the payment receipts, agreement for sale, construction agreement, letter dated 24/12/2018, general power of attorney.



2. The Complainants filed I. A. 164/ 2023, an impleading petition stating that in the reply to the show cause notice dated 24/05/2023, the first respondent stated that the ownership of M/s. Heera Constructions Co.(P) Ltd., is held with M/s. Royal Heights Projects Private Ltd. and for the proper adjudication of the complaint, it is necessary to implead the above-said firm as additional Respondents and prayed to implead the said firm and the representative as additional 3rd & 4th Respondents. The Complainants also filed I. A. 165/2023, petition for making changes in accordance with the above said impleading petition. Both the I. A.s were allowed and the amended Complaint was filed by the Complainant stating that the 1st respondent has dropped the project and as stated by the 1st respondent before the Authority, the Additional 3rd respondent is holding the ownership of the 1st respondent. Hence the Additional 3rd Respondent is liable to pay the claimed amount with interest and the relief sought was changed accordingly.

3. The Respondents 3 & 4 filed preliminary objection and submitted as follows: The present Complaint is not maintainable and is liable to be dismissed with costs. The present Complaint in Form M neither contains any pleadings showing cause of action against these Additional Respondents nor discloses any cause of action against these Additional Respondents and as such the complaint is liable to be dismissed and/or rejected for want of cause of action. Even as per the complainant's case, the



alleged agreement was not entered into with Additional Respondents, and purported payments were not made to these Respondents. The complaint does not explain or demonstrate the basis of seeking reliefs against the Respondent No.3 and 4 and how such reliefs are maintainable against Respondent Nos. 3 and 4. No documents supporting Respondent Nos.3 and 4's role in the transaction is submitted before the Authority. As such, the complaint is not maintainable either on facts or law. Further, the role of Respondent No. 4 in the transaction is not pleaded in the complaint and hence Respondent No. 4 cannot be impleaded as a party. It is a settled law that a Managing Director cannot be personally held liable for the acts of the company. Thus, even assuming there is any default on the part of Respondent No.3, the Respondent No.4 cannot be impleaded as a party. This was done solely with an intention to harass Respondent No. 4. The Respondent No.3 is a distinct and separate legal entity from Respondent No. 1 and an entity constituted later to the purported transaction alleged in the complaint. Respondent No.3 admittedly had no role in the execution of contracts or in receiving the monies from the complainant. Thus, there is no basis for the complaint initiated against Additional Respondents.

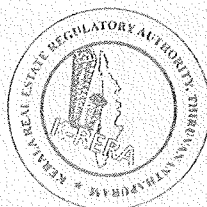
4. It was further submitted that Respondent No.1, which has undergone Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") remains and continues as a



separate legal entity with re-structured debt payment obligations as set out in the sanctioned resolution plan. The liability of payouts remains with Respondent No.1 and only its shareholding pattern is changed as per the sanctioned resolution plan. The Respondent No.3 is given the right to acquire and own 100% share capital directly or through its nominees as per the resolution plan. It is well established legal position that a shareholder cannot be held liable for the debts, act or omissions of the company and the liability is limited as provided in the Companies Act, 2013. Therefore, the Respondent No.3 being shareholder of the Respondent No. 1 cannot be dragged into litigation and harassed in the manner as done in the instant case even assuming (whilst denying) there is any default on the part of Respondent No. 1. The present complaint is an abuse of process of law. It was submitted that CIRP against Respondent no.1 was initiated on 27.03.2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 by National Company Law Tribunal (Mumbai Bench) (hereinafter referred to as "NCLT"). The committee of creditors of Respondent No.1 has approved the resolution plan submitted by a consortium led by Respondent No.3. The resolution plan submitted by the resolution applicant was sanctioned by the NCLT by its order dated 31.03.2023. It was submitted that the resolution plan covers the pay outs regarding all the creditors who have submitted their claims to the Resolution Professional as per procedure envisaged under the IBC. It also provides for construction and completion of



the apartment projects of Respondent No.1 as set out in the resolution plan on time. Hence all the claims of the creditors of Respondent No. 1 are frozen as per the resolution plan. No claim would lie before any other courts or forum or tribunals in respect of the debt of Respondent no.1. Without prejudice to the above, it was submitted that the position of law is well settled that once a company undergoes CIRP, the payment entitlement of all the creditors would be strictly as provided in the resolution plan. All claims unless otherwise provided in the resolution plan shall cease to exist. All creditors are liable to adhere to the resolution plan once sanctioned by the National Company Law Tribunal as per Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC"). The Section 31 of the IBC is set out below. Any creditors contravening the provisions and initiating litigation as done in the instant case is liable for punishment as provided in Section 74(3) of the Insolvency and Bankruptcy Code, 2016. No proceedings can be initiated against the Respondent No. 1,3 and 4 once the resolution plan is sanctioned except as provided in the resolution plan. These Respondents reserves their right to initiate appropriate proceedings against the Complainant as and when required. Since the resolution plan is approved by the NCLT, the Authority would not have jurisdiction to deal with any cases pertaining to creditors of the corporate debtor as all claims have been dealt with under the resolution plan.



5. The Hon'ble Supreme Court has held in Committee of Creditors of Essar Steel India Ltd. Vs Satish Kumar Gupta and Ors. (2020) 8 SCC 531 as follows: "For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code. A successful resolution applicant cannot be faced with "undecided claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This is the successful resolution applicant does on a fresh slate, as has been pointed out herein above. For these reasons, NCLAT judgment must also be set aside on this count."

6. Further, the Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons Pvt Ltd. V Edelweiss Asset Reconstruction Company Ltd (Civil Appeal No. 829 of 2019) has held as follows:



“95.(i) Once a resolution plan is duly approved by the Adjudicating Authority under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings with respect to a claim, that is not part of the resolution plan;”

8. The above position was reiterated by the Supreme Court in *Ruchi Soya Industries Limited and Others v. Union of India and Others* (2022 KHC 3706), wherein the Hon’ble Supreme Court held as follows:

*“102. In the result, we answer the questions framed by us as under:
102.1. That once a resolution plan is duly approved by the adjudicating authority under subsection (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.*

9. It was submitted that once the resolution plan is sanctioned by the NCLT, following consequences would ensue on all claims of creditors against corporate debtor: (i) All claims covered under the resolution plan shall be frozen and dealt with as per the resolution plan. (ii) All claims not covered under the resolution plan shall cease to exist. (iii) No forum would be



entitled to decide on claims against corporate debtor. The complaint is not maintainable for the afore mentioned reasons. The complainant had filed a claim before the Resolution Professional under IBC, the claim would stand frozen as per the resolution plan and if not, shall cease to exist or stand extinguished as per the Supreme Court decisions in Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, Committee of Creditors of Essar Steel India Ltd Vs. Satish Kumar Gupta and Ors and Ruchi Soya Industries Limited and Others V Union of India.

10. It was submitted further that the Complainant in the penultimate paragraph of the complaint has stated that “1st Respondent has dropped the project as stated by the 1st Respondent before the Authority and Additional 3rd Respondent is holding the ownership of the 1st Respondent. It is not correct that the 3rd Respondent is holding the ownership of the Project. The project is owned by the 1st Respondent and will continue to remain under ownership of 1st Respondent. The construction plan of the project Heera Dreams is covered under the resolution plan sanctioned by the NCLT and remains very much as project of Respondent No.1. The Complainant appears to have mistaken the successful CIRP process under IBC as a case of merger, which is not true. The basis of initiating the complaint against these additional Respondent is therefore based on a mistaken belief. The complaint is liable to be



dismissed on this ground alone. The resolution plan sanctioned by the NCLT would take effect only on the record date as provided in the resolution plan. The record date as provided in the resolution plan is 45 business days from the NCLT Approved Date, provided no appeal is pending before any forum/court against the approval of the plan under applicable laws as on date. In the instant case, the Company Appeal (AT) (Ins) 740/2023 and 741/2023 is pending before the Hon'ble NCLAT. It was further submitted that even in the event of default in implementing the resolution plan, the jurisdiction to decide such default would lie before the NCLT. No other Court would have jurisdiction to decide on claims covered under the resolution plan. It was submitted that necessary performance guarantee is furnished by the Respondent no.3 before the Hon'ble NCLT ensuring implementation of the resolution plan as submitted before the NCLT. No complaint would lie against this Respondent nos. 1, 3 and 4. The claims against successful resolution applicant, on basis of debt of the corporate debtor i.e., Respondent no.1, is barred by law. Any complaints against the Respondent no.1 before the record date (as stated above) could be maintained only as per the procedure envisaged under the IBC. The complaint is therefore liable to be dismissed with exemplary costs.

11. It was further submitted that any decision rendered on claim of creditors by this Authority would tantamount to review and revision of the resolution plan sanctioned by the



Hon'ble NCLT. The Supreme Court has categorically held that once the resolution plan is approved by the committee of creditors, the Courts cannot substitute it or alter it. The resolution plan approved out of commercial wisdom of the committee of creditors is final and binding on all creditors once sanction is accorded by the NCLT. The Authority therefore cannot decide on the claims of the creditors of Respondent no.1 which is frozen as per resolution plan sanctioned by the NLCT. No proceedings would lie against Respondent nos. 1, 3 and 4 reasons and hence the complaint is liable to be dismissed with costs. It was further submitted that the present complaint contains reliefs in compensation, which is not maintainable before the Authority. Further, the interest sought is over and above the statutory mandate, which is also not maintainable. The complaint is therefore not proper and liable to be rejected. For all or any of the reasons, it was submitted that the complaint be dismissed as not maintainable with costs.

12. Heard both parties in detail. The documents submitted by the Complainant are marked as Exhibit A1 to A5. The documents submitted by the Respondents are marked as Exhibit B1 to B2. Exhibit A1 are the receipts of payment made by the Complainant to the Respondent No.1. Exhibit A2 is the agreement for sale executed between the Complainant and the Respondent No.1 represented by the Respondent No. 2. Exhibit A3 is the construction agreement executed between the Complainant and the



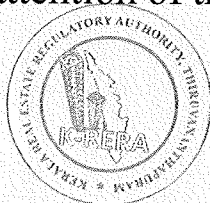
Respondent No.1 represented by the Respondent No.2. Exhibit A4 is the letter dated 24.12.2018 issued by the Complainant to the Respondent No.2. Exhibit A5 is the General power of Attorney executed by the Complainant. Exhibit B1 is the order dated 31.03.2023 of Hon'ble NCLT, Mumbai in I. A. 1841 of 2022 in CP 4447 of 2018 allowing the Resolution Plan. Exhibit B2 is the case status of Company Appeal (AT) (Ins) 740/2023.

13. When the Complaint came up for initial hearing on 10/07/2023, Respondent No.2 submitted through a reply to the show cause issued by the Authority that NCLT proceedings were going on and a new management had taken over the project. The Complainant sought time for filing impleading petition and amendment petition. Accordingly, the Complainant filed an I. A. 164/23 & I. A. 165/23, amendment petition and impleading petition which were allowed and it was decided to issue notice to the newly impleaded Respondents.

14. On 05/04/2024, counsel for R3 & 4 filed preliminary objection. The counsel for the Complainant sought short time to argue the matter as he is not well acquainted with the IBC provisions. The Counsel for the Respondents argued that the Complainant neither took part in the Resolution plan nor done anything to file the claim as provided under the law. According to him, the resolution plan covers the payouts regarding all the



creditors who have submitted their claims to the Resolution Professional as per procedure envisaged under the IBC. It also provides for construction and completion of the apartment projects of Respondent No.1 as set out in the resolution plan on time and hence all the claims of the creditors of Respondent No. 1 are frozen as per the resolution plan and no claim would lie before any other courts or forum or tribunals in respect of the debt of Respondent no.1. He also submitted that once a company undergoes CIRP, the payment entitlement of all the creditors would be strictly as provided in the resolution plan. On 14/08/2024, the learned counsel appeared for the Complainant submitted that he has nothing to argue on the issue of maintainability and hence he was leaving it to the discretion of this Authority to pass any order in this regard. The learned counsel for the Respondent 3& 4 submitted further that the matter is still pending before the NCLAT and hence the complaint is not maintainable before this Authority. He argued that even in the event of default in implementing the resolution plan, the jurisdiction to decide such default would lie before the NCLT and no other Court would have jurisdiction to decide on claims covered under the resolution plan. He argued that the claims against successful resolution applicant, on basis of debt of the corporate debtor i.e., Respondent no.1, is barred by law and any complaints against the Respondent no.1 before the record date could be maintained only as per the procedure envisaged under the IBC. He invited the attention of this Authority to some judgements



passed by the Hon'ble Supreme Court of India in this respect in 1) Ghanashyam Mishra and Sons Pvt. Ltd Vs. Edelweiss Asset Reconstruction Company Ltd, 2) Committee of Creditors of Essar Steel India Ltd Vs. Satish Kumar Gupta and Ors and 3) Ruchi Soya Industries Limited and Others Vs. Union of India.

15. This Authority find in agreement with the contentions of the learned counsel for the Additional Respondents No. 3&4 as the arguments advanced are well founded and supported by both statutory provisions and judicial precedents. Moreover, the matter is still pending consideration of NCLAT. Having considered all these facts and circumstances, it is found that the above complaint is not maintainable before this Authority. Hence the complaint is hereby dismissed.

Sd/-

Sri Preetha P Menon
Member

/True Copy/Forwarded By/Order/


Secretary (legal)

APPENDIX**Documents produced by the Complainant**

Exhibit A1- copies of the receipts of payment made by the Complainant to the Respondent No.1.

Exhibit A2- Copy of the agreement for sale

Exhibit A3- Copy of the construction agreement

Exhibit A4- Copy of the letter dated 24.12.2018

Exhibit A5- Copy of the General power of Attorney executed by the Complainant.

Documents produced by the Respondents

Exhibit B1- Copy of the order dated 31.03.2023 of Hon'ble NCLT, Mumbai in I. A. 1841 of 2022 in CP 4447 of 2018.

Exhibit B2- Case status of Company Appeal (AT) (Ins) 740/2023.

APPENDIX

LIST OF ABBREVIATIONS

Abbreviations of the names of the authors and of the titles of the papers are given in this list.

Authors

Abbreviations of the names of the authors are given in this list.

Titles of Papers

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ABBREVIATIONS OF THE NAMES OF THE AUTHORS